

Application No. 09/849448(Docket: DT.0104)  
37 CFR 1.111 Amendment dated 02/15/2006  
Reply to Office Action of 11/16/2005

### **REMARKS/ARGUMENTS**

In the Office Action, the Examiner noted that claims 1-30 are pending in the application. The Examiner additionally stated that claims 1-30 are rejected. By this amendment, claims 1-17 and 27-28 have been cancelled and claims 18-19 have been amended. Hence, claims 18-26 and 29-30 are pending in the application.

Applicant hereby requests further examination and reconsideration of the application, in view of the foregoing amendments.

#### **Double Patenting/Terminal Disclaimer**

The Examiner noted that the terminal disclaimer filed on 09/28/2005 was disapproved due to the absence of a reference to related application number 09/849,621 (Docket: DT.0102) and that since the rejection is provisional, the double patenting rejections will be held in abeyance until claims are identified as allowable.

Applicant responds by submitting herewith a Terminal Disclaimer to Obviate a Double Patenting Rejection Over a Prior Patent and Provisional Double Patenting Rejections Over Pending "Reference" Applications. The Terminal Disclaimer submitted herewith disclaims, except as provided therein, the terminal part of the statutory term of any patent granted on the instant application, which would extend beyond the expiration date of the full statutory term defined in 35 U.S.C. 154 to 156 and 173, as presently shortened by any terminal disclaimer, of prior Patent No.6553352 (Docket: DT.0103) filed on 05/04/2001, along with the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any patent granted on pending reference Application Number 09/849,168 (Docket: DT.0101), filed on 05/04/2001, as such term is defined in 35 U.S.C. 154 and 173, and as the term of any patent granted on said reference application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending reference application. The Terminal Disclaimer submitted herewith also disclaims, except as provided therein, the terminal part of the statutory term of any patent granted on the instant application which would extend beyond the expiration date of the full statutory term of any patent granted on pending reference Application Number 09/849,621

Application No. 09/849448(Docket: DT.0104)  
37 CFR 1.111 Amendment dated 02/15/2006  
Reply to Office Action of 11/16/2005

(Docket: DT.0102), filed on 05/05/2001, as such term is defined in 35 U.S.C. 154 and 173, and as the term of any patent granted on said reference application may be shortened by any terminal disclaimer filed prior to the grant of any patent on the pending reference application

Please substitute the attached Terminal Disclaimer for the Terminal Disclaimer filed on 09/28/2005. The corresponding fee was paid along with the submittal on 09/28/2005.

#### **In the Specification**

Applicant has amended the specification to secure a substantial correspondence between the claims amended herein and the remainder of the specification. No new matter is presented.

#### **In the Claims**

##### **Double Patenting Rejections**

The Examiner issued provisional rejections of claims 1-30 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-35 of copending application No. 09/849,621 (Docket: DT.0102), filed on 05/05/2001 and over claims 1-39 of copending application No. 09/849,168 (Docket: DT.0101), filed on 05/04/2001. The Examiner also issued rejections of claims 1-30 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 2 of Delurgio, U.S. Patent 6,553,352 (Docket: DT.0103).

With regard to the above noted rejections, Applicant provides herewith a terminal disclaimer to obviate a double patenting rejection over a prior patent and provisional double patenting rejections over pending "reference" applications, as previously stated. Accordingly, it is respectfully requested that the double patenting rejections be withdrawn.

##### **Allowable Subject Matter**

The Examiner indicated that claim 28 would be allowable if rewritten or terminally disclaimed to overcome the double patenting rejections, set forth in the office action and including all of the limitations of the base claim and any intervening claims.

Application No. 09/849448(Docket: DT.0104)  
37 CFR 1.111 Amendment dated 02/15/2006  
Reply to Office Action of 11/16/2005

Applicant appreciates the Examiner's consideration and indications of allowability of the claim. By this amendment, the allowable limitations of claim 28 along with the limitations of intervening claim 27 have been incorporated into the language of claim 18. Claims 27-28 have been cancelled and those claims depending from claims 27-28 have been amended to now depend from claim 18, as appropriate.

**Rejections Under 35 U.S.C. §102(b)**

The Examiner rejected claims 1-6 and 10-17 under 35 U.S.C. 102(b) as being anticipated by Cunningham et al. (U.S. Patent No. 6,029,139). More specifically with respect to claim 1, the Examiner noted that Cunningham discloses an apparatus for determining an optimum promotion plan for merchandising of products for sale, comprising:

- a scenario/results processor, configured to enable a user to prescribe an optimization scenario, and configured to present the optimum promotion plan to said user, wherein the optimum promotion plan is determined by execution of said optimization scenario, and wherein the optimum promotion plan is determined based upon estimated product demand and calculated activity based costs (col. 2, lines 24-28; col. 5, line 24 through col. 6, line 21 - noting that desired sales volumes may be specified, which means that an estimated product demand is utilized to assess an optimal promotion strategy), wherein said calculated activity based costs include fixed and variable costs for the products for sale (col. 5, line 39; col. 6, lines 1-21 - For example, there are fixed costs and incremental, or variable, costs), said scenario/results processor comprising:
  - an input/output processor, configured to acquire data corresponding to said optimization scenario from said user, and configured to distribute optimization results to said user (col. 5, lines 24-57); and
  - a scenario controller, coupled to said input/output processor, configured to control the acquisition of said data and the distribution of said optimization results in accordance with a promotion plan optimization procedure (col. 5, lines 24-57).

Application No. 09/849448(Docket: DT.0104)  
37 CFR 1.111 Amendment dated 02/15/2006  
Reply to Office Action of 11/16/2005

Applicant respectfully disagrees with the Examiner's rejection of claim 1, but has elected to cancel claims 1-6 and 10-17 for the purpose of expediting the patent application process in a manner consistent with the PTO's Patent business Goals (PBG), 65 Fed. Reg. 54603 (September 8, 2000). Claim 2 as now presented contains only those limitations of originally filed claim 2. Consequently, the rejections of claims 1-6 and 10-17 are rendered moot.

**Rejections Under 35 U.S.C. §103(a)**

The Examiner rejected claims 7-9, 18-27, and 29-30 under 35 U.S.C. 103(a) as being unpatentable over Cunningham et al. (U.S. Patent No. 6,029,139). As per claims 7-9, the Examiner stated that Cunningham teaches use of a browser-based interface for communications (col. 2, lines 38-44), and while Cunningham does not expressly teach that the related templates are provided according to hypertext markup language (HTML) (claim 7), according to extensible markup language (XML) (claim 8), or as applets (claim 9), the Examiner submits that it is old and well-known in the art of programming browsers and related communication protocols to implement desired functionality using hypertext markup language (HTML), extensible markup language (XML), or applets. The Examiner opined that each programming language/technique provides a different set of benefits and is therefore selected for use by a programmer according to his/her needs or programming skills, and in order to make Cunningham adaptable to systems maintained by of varying programming needs and skills, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Cunningham to provide templates according to hypertext markup language (HTML) (claim 7), according to extensible markup language (XML) (claim 8), or as applets (claim 9).

By this communication, claims 7-9 are cancelled, thereby rendering the rejections moot.

The Examiner noted that claims 18-27 and 29-30 recite limitations addressed by the rejection of claims 1-17 and furthermore that Cunningham does not expressly teach that the templates are actively presented to the user in a sequential fashion (as opposed to merely gathering required data from various processes/inputs/outputs in a predefined

Application No. 09/849448(Docket: DT.0104)  
37 CFR 1.111 Amendment dated 02/15/2006  
Reply to Office Action of 11/16/2005

format, which is taught by Cunningham). It was noted, however, that Official Notice was taken that it is old and well-known in the art of interactive modeling to present a user with templates that are actively presented to the user in a sequential fashion to gather model inputs. The Examiner further stated that the sequential presentation of templates helps users better organize and more efficiently input the appropriate modeling parameters, and since Cunningham teaches the basis concept of templates (or predefined formats) along with the use of an interactive browser to glean promotion parameters from a user, the Examiner submits that it would have been obvious to one of ordinary skill in the art at the time of Applicant's invention to modify Cunningham to utilize templates that are actively presented to the user in a sequential fashion to gather various promotion model parameters in order to help users better organize and more efficiently input the appropriate modeling parameters.

Since by this communication, claim 18 has been amended to incorporate subject matter which has been indicated as being allowable over the prior art of record, Applicant respectfully requests withdrawal of the rejection of claim 18.

Claim 27 has been cancelled, thereby rendering the rejection moot.

With respect to claims 19-26 and 29-30, these claims depend from claim 18 and add further limitations that are neither anticipated nor made obvious by Cunningham. Accordingly, Applicant respectfully requests that the Examiner withdraw the rejections of claims 19-26 and 29-30.

Application No. 09/849448(Docket: DT.0104)  
37 CFR 1.111 Amendment dated 02/15/2006  
Reply to Office Action of 11/16/2005

### CONCLUSIONS

In view of the arguments advance above, Applicant respectfully submits that claims 18-26 and 29-30 are in condition for allowance. Reconsideration of the rejections is requested, and allowance of the claims is solicited.

Applicant earnestly requests that the Examiner contact the undersigned practitioner by telephone if the Examiner has any questions or suggestions concerning this amendment, the application, or allowance of any claims thereof.

I hereby certify under 37 CFR 1.8 that this correspondence is being facsimile transmitted to the United States Patent and Trademark Office on the date of signature shown below.
--

Respectfully submitted,  
**HUFFMAN PATENT GROUP, LLC**

*/ Richard K. Huffman /*

By: \_\_\_\_\_

**RICHARD K. HUFFMAN, P.E.**

Registration No. 41,082

Tel: (719) 575-9998

*02/15/2006*

Date: \_\_\_\_\_